

ESTTA Tracking number: **ESTTA619241**

Filing date: **08/04/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213573
Party	Defendant Biocenosis Solutions, Inc.
Correspondence Address	ANNETTE P HELLER HELLER & ASSOCIATES 400 CHESTERFIELD CTR, STE 400 CHESTERFIELD, MO 63017-4800 UNITED STATES tmattorneypto@aol.com, tmattorneyheller@aol.com,tmattorneyturek@aol.com
Submission	Other Motions/Papers
Filer's Name	Annette P. Heller
Filer's e-mail	tmattorneyheller@aol.com
Signature	/aph76/
Date	08/04/2014
Attachments	Biocenosis Response to Motion to Compel-Affidavit-Exhibits.pdf(475971 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The Biosolve Company)	
Opposer,)	
)	
v.)	Opposition No. <u>91213573</u>
)	
Biocenosis Solutions, Inc.)	
Applicant.)	
_____)	

**APPLICANT’S RESPONSE TO OPPOSER’S
MOTION TO COMPEL AND
MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

In response Opposer’s, The Biosolve Company, Motion To Compel and To Extend Discovery and Trial Dates, Applicant, Biocenosis Solutions, Inc. states the following:

Opposer and Applicant negotiated a settlement directly whereby it was agreed that Applicant would file a new application for Bio-Solinc and Opposer agreed to suspend the opposition proceedings while Applicant’s application was being prosecuted. During this negotiation time, Applicant and Opposer agreed to hold up on discovery while they continued to negotiate since neither party wanted to incur legal fees if the opposition could be settled.

On June 23, 2014, Applicant filed its application that the parties had agreed to which was assigned the serial number 86317773. Attached as Exhibit A is a screen shot of the application from the TESS. Applicant has completed his part of the settlement reached.

It was also agreed that Applicant’s attorney would electronically file the Motion to Suspend which would need Opposer’s attorney consent. However, Opposer’s attorney would not consent to the electronic filing for the suspension [See Exhibits B & C emails attached to Applicant’s attorney’s affidavit] and insisted that Applicant’s attorney submit a written motion

for his review and his client's approval. Applicant's attorney explained that it was agreed that should the new application be denied and the opposition reopened, we would agree to reset discovery and other dates. It should also be noted that Opposer's attorney had been advised in late February or early March that the parties was discussing settlement and suggested that the proceedings be suspended. However, Opposer's attorney never agreed to a suspension while the parties talked. [Attached is Applicant's attorney affidavit verifying the facts of this response.]

Opposer has breached the agreement reached by the parties by the filing this motion. Applicant respectfully requests that the motion be denied and the proceedings be suspended pending the disposition of the application filed in accordance with the agreement reached by the parties.

Respectfully submitted,
BIOCENOSIS SOLUTIONS, INC.



By:
Annette P. Heller
Heller & Associates
400 Chesterfield Center, Suite 400
Chesterfield, MO 63017
Tel: (314) 469-2610
Fax: (314) 469-4850
tmattorneyheller@aol.com

Dated: 08/04/14

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served by mailing said copy on 08/04/14 via U.S. Mail, postage pre-paid, to:

John H. Pearson, Jr.
Pearson & Pearson, LLP
10 George St.
Lowell, MA 01852



Annette P. Heller, Attorney for Applicant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The Biosolve Company
Opposer,

v.

Biocenosis Solutions, Inc.
Applicant.

Opposition No. 91213573

**APPLICANT'S ATTORNEY'S AFFIDAVIT IN SUPPORT OF ITS
RESPONSE TO OPPOSER'S
MOTION TO COMPEL AND
MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

I, Annette P. Heller, attorney for Applicant, and under penalties of perjury, state the following:

1. In late February or early March, I contacted Opposer's attorney to advise that the clients were talking settlement and suggested we file a motion to suspend the proceedings.
2. I was also advised by my client that it was agreed to hold up on discovery. I also advised Opposer's attorney of my understanding. Opposer's attorney never got back to me on the suspension request but the client's continued to talk.
3. The parties reached a settlement in early June. I was advised by my client to file a new application and to suspend the proceedings.
4. I filed the new application on June 24, 2014 for Bio-Solinc Serial Number 86317773. See Exhibit A for screen shot from TESS.
5. I contacted Opposer's attorney on July 5 for his consent to suspend the opposition electronically. Opposer's attorney would not consent to the electronic suspension. Attached is the email exchange with Opposer's attorney on the consent. [Exhibit B]
6. On July 8, I sent Opposer's attorney a sample electronic consent. Attached is the email exchange concerning his response to filing an electronic suspension. [Exhibit C]

By:



Dated: 08/04/14

Annette P. Heller

EXHIBIT A

**United States Patent and Trademark Office**[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Trademarks > Trademark Electronic Search System (TESS)**

TESS was last updated on Thu Jul 31 03:21:03 EDT 2014

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)[Logout](#) Please logout when you are done to release system resources allocated for you.**Record 1 out of 1**[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

BIO-SOLINC

Word Mark	BIO-SOLINC
Goods and Services	IC 001. US 001 005 006 010 026 046. G & S: Wast water treatment chemicals for industrial, municipal, and residential use for the purpose of enhancing microbial activity and performance
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86317773
Filing Date	June 23, 2014
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Biocenosis Solutions, Inc. CORPORATION ILLINOIS 16 Greve Dr. Centralia ILLINOIS 62801
Attorney of Record	Annette P. Heller
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#)[.HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

EXHIBIT B

Subj: **Re: BioSolve v. Biocenosis; Our Reference: 36013**
Date: 7/7/2014 3:20:11 P.M. Central Daylight Time
From: Tmattorneyheller@aol.com
To: patlaw@pearson-pearson.com

I will be using the electronic filing of the motion so there is no written motion to attach.

From the emails I have seen from your client, he is in agreement with the suspension and we have filed the new application as agreed.

I just need to know if I can indicate you consent to the suspension motion.

Annette

Annette P. Heller
Trademark and Copyright Attorney
400 Chesterfield Center Suite 400
Chesterfield [St. Louis] MO 63017

314-469-2610 Fax 314-469-4850
TMAttorneyHeller@aol.com
WebSite: <http://www.trademarkatty.com>

In a message dated 7/7/2014 2:35:28 P.M. Central Daylight Time, patlaw@pearson-pearson.com writes:

Dear Ms. Heller,

Please prepare an appropriate Motion for our client's approval and our signature resetting all dates with deadlines.

Thank you.

John H. Pearson, Jr.

From: Tmattorneyheller@aol.com [mailto:Tmattorneyheller@aol.com]
Sent: Saturday, July 05, 2014 5:09 PM
To: Pearson & Pearson, LLP
Cc: rrisley@water-treat-tech.com
Subject: BioSolve v. Biocenosis; Our Reference: 36013

John,

It is my understanding that the parties have agreed to suspend the proceedings until our client's new application [see attached] is approved. In order to do this, I can file a motion with your consent asking that the proceedings be suspended. This will then move all dates forward per our request. Do I have your consent to file the suspension motion.

Annette

Annette P. Heller
Trademark and Copyright Attorney
400 Chesterfield Center Suite 400
Chesterfield [St. Louis] MO 63017

314-469-2610 Fax 314-469-4850
TMAttorneyHeller@aol.com
WebSite: <http://www.trademarkatty.com>

=

EXHIBIT C

Subj: **Re: Discovery Due Dates**
Date: 7/8/2014 4:37:13 P.M. Central Daylight Time
From: Tmattorneyheller@aol.com
To: patlaw@pearson-pearson.com
BCC: risley@water-treat-tech.com

The parties were negotiating and it was my understanding that they agreed to delay discovery pending a resolution. They reached a resolution and as long as our client's new application goes through without a problem we will agree to a dismissal.

It appears to me that your client does not want to incur additional attorney's fees nor does mine. I have reset discovery periods in the past and we can do that should we have to reopen the opposition. Right now the least expense way to handle the matter is to file for a consented suspension. I do not understand your insistence in creating billable work for your client and mine. By suspending the opposition no one loses their rights.

Annette

Annette P. Heller
Trademark and Copyright Attorney
400 Chesterfield Center Suite 400
Chesterfield [St. Louis] MO 63017

314-469-2610 Fax 314-469-4850
TMAttorneyHeller@aol.com
WebSite: <http://www.trademarkatty.com>

In a message dated 7/8/2014 3:32:00 P.M. Central Daylight Time, patlaw@pearson-pearson.com writes:

Dear Attorney Heller,

Your stock Motion is not acceptable.

Your delays in answering our client's discovery requests are not appreciated and have prejudiced our client.

Furthermore, we want to depose your client as soon as possible.

Your client's answers to our Interrogatories were due on March 3, 2014.

Your client's Responses to our Requests for Production of Documents were due February 29, 2014.

To date, after repeated requests, you have still not answered our discovery requests.

You must include in the Motion the original due dates of your answers, etc., and that your answers and responses will be served within thirty (30) days.

We are now completing a Motion to Compel and expect to file the same shortly.

We, again, request that you prepare an appropriate Motion including due dates of your answers to our Interrogatories as well as extend all discovery dates, etc. for our review.

John H. Pearson, Jr.

From: Tmattorneyheller@aol.com [mailto:Tmattorneyheller@aol.com]
Sent: Tuesday, July 08, 2014 12:11 PM
To: Pearson & Pearson, LLP
Subject: Fwd: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA614130

Below is a sample motion that is electronically generated by the TTAB system that was filed by the other party and I received this confirmation. We do not attach any motion. It will automatically be granted.

Let me know if this is satisfactory with you. Otherwise give me a call to discuss.

Annette P. Heller
Trademark and Copyright Attorney
400 Chesterfield Center Suite 400
Chesterfield [St. Louis] MO 63017

314-469-2610 Fax 314-469-4850
TMAttorneyHeller@aol.com

WebSite: <http://www.trademarkatty.com>

From: estta-server@uspto.gov
To: tm-slc@stoel.com, tmattorneyheller@aol.com, tmattorneyturek@aol.com
Sent: 7/7/2014 4:14:54 P.M. Central Daylight Time
Subj: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA614130

Stipulated/Consent Motion.

Tracking No: ESTTA614130

ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Stipulated/Consent Motion. submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.

The status of any Board proceeding may be checked using TTABVUE which is available at <http://ttabvue.uspto.gov> Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your filing in due course.

Printable version of your request is attached to this e-mail

ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA614130
Filing date: 07/07/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding : 92058800
 Applicant : Coupland Cardiff Asset Management LLP
 Other Party:Plaintiff
 Corn Capital Innovations, LLC

Motion for Suspension for Settlement With Consent

The parties are actively engaged in negotiations for the settlement of this matter. Coupland Cardiff Asset Management LLP requests that this proceeding be suspended for 180 days to allow the parties to continue their settlement efforts.

Time to Answer :CLOSED

Deadline for Discovery Conference :CLOSED

Discovery Opens :CLOSED

Initial Disclosures Due :CLOSED

Expert Disclosure Due :06/09/2015

Discovery Closes :07/09/2015

Plaintiff's Pretrial Disclosures :08/23/2015

Plaintiff's 30-day Trial Period Ends :10/07/2015

Defendant's Pretrial Disclosures :10/22/2015

Defendant's 30-day Trial Period Ends :12/06/2015

Plaintiff's Rebuttal Disclosures :12/21/2015

Plaintiff's 15-day Rebuttal Period Ends :01/20/2016

Coupland Cardiff Asset Management LLP has secured the express consent of all parties to this proceeding for the suspension and resetting of dates requested herein.
 Coupland Cardiff Asset Management LLP has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by First Class Mail on this date.

Respectfully submitted,

/Joshua G. Gigger/

Joshua G. Gigger

tm-slc@stoel.com

tmattorneyheller@aol.com, tmattorneyturek@aol.com

07/07/2014

=